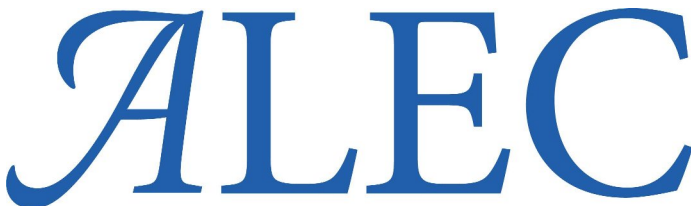


## Before the

**GN Docket No. 12-353**



**REPLY COMMENTS OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL  
("ALEC")<sup>1</sup>**

## I. Introduction and Summary

ALEC submits the following in reply to the comments filed in connection with the petitions submitted separately by AT&T and the National Telecommunications Cooperative Association (“NTCA”) urging changes in policies to reflect the increasing use of the Internet Protocol (“IP”) to deliver voice communications services. ALEC believes that the Federal Communications Commission (“Commission”) has the authority to conduct experimental trials for the limited purpose of gathering data about consumers’ use of voice services and the impact and continued

<sup>1</sup> These comments express the views of Rep. Blair Thoreson of North Dakota, Bartlett Cleland of the Institute for Policy Innovation, and John Stephenson of ALEC. The views expressed do not necessarily reflect the view of the members of or others associated with ALEC, the State of North Dakota, or the Institute for Policy Innovation. ALEC works to advance the fundamental principles of free-market enterprise, limited government, and federalism at the state level through a nonpartisan public-private partnership of America's state legislators, members of the private sector and the general public.

relevance of accompanying regulations. Further, ALEC believes these trials should be structured in such a way that they embody elements of ALEC's *Principles for Communications and Technology*, specifically: (1) government should strive for competitive and technological neutrality in its policies; and (2) any necessary regulations should be simple, certain, and accompanied by safeguards.

## **II. The State of Communications Policy**

In its *National Broadband Plan* (“*Plan*”), the Commission identified broadband deployment as “the great infrastructure challenge of the 21<sup>st</sup> century.”<sup>2</sup> A key impediment, according to the *Plan*, is the high costs for broadband deployment to areas that remain unserved. Indeed, the Commission has labeled many of these areas “uneconomic,” thus presenting costly deployment challenges for service providers. But the *Plan* also speaks directly to the regulatory costs hindering IP-enabled technologies. Legacy regulations governing voice communications using Time Division Multiplexing technologies, for example, influence and weaken the case for investment in transitioning to all-IP networks. As the *Plan* explains, requiring carriers to maintain outdated services “siphon[s] investment[] away from new networks and services” and “strands it in obsolete facilities.”<sup>3</sup> In other words, these legacy regulations threaten to delay consumers’ ability to reap the benefits of ubiquitous IP-based technology. Therefore, the *Plan* recommended that the Commission initiate a rulemaking proceeding to “ensure that legacy regulations and services did not become a drag on the transition to a more modern and efficient use of resources.”<sup>4</sup>

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<sup>2</sup> FCC, *Connecting America: The National Broadband Plan*, at 3 (2010), <http://www.broadband.gov/>.

<sup>3</sup> *Id.* at 49.

<sup>4</sup> *Id.* at 59.

The Commission recognizes this issue. When Chairman Genachowski announced the formation of the Commission's new Technology Transitions Policy Task Force, he said: "Technological transitions don't change the basic mission of the FCC. But technology changes can drive changes in markets and competition. And many of the Commission's existing rules draw technology-based distinctions. So the ongoing changes in our nation's communications networks require a hard look at many rules that were written for a different technological and market landscape."<sup>5</sup>

### **III. ALEC's *Principles for Communications and Technology* Can Help Inform Policymaking**

The trials proposed by the petitioners should be limited in scope. The primary purpose of these trials is to gather data to guide rulemaking on a future regulatory framework for voice communications services, consistent with the goals of the *National Broadband Plan*. Without limits, there is a risk that the trials will devolve into additional unnecessary rulemaking that draws attention away from the fact-finding necessary to facilitate achieving the goals of the *Plan*. Further, there is also a risk that no limits to the trials will cause interference with the statutory rights and responsibilities of both incumbents and competitors in the communications marketplace, resulting in discriminatory treatment that ultimately harms consumers.

As to the scope of the trials, ALEC believes the Commission should act within an appropriate policy framework to carefully consider the views espoused by all stakeholders in designing the geographic, temporal, technological, and legal parameters of the trials. The trials should also examine a variety of regulatory requirements and reforms at various levels and to varying

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<sup>5</sup> FCC, "FCC Chairman Julius Genachowski Announces Formation of 'Technology Transitions Policy Task Force.'" Dec [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db1210/DOC-317837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1210/DOC-317837A1.pdf)

degrees to provide as much valuable data as possible for later analysis. Therefore, ALEC believes it is necessary to consider the petitions from a perspective that embodies elements of ALEC's *Principles for Communications and Technology* as articulated below.

**A. Government Should Strive to Support Principles of Competition and Technological Neutrality in its Policies**

Marketplace competition should not be micromanaged by the government. However, government can promote competition by setting the right conditions in a neutral manner that empowers business and consumers to make their own decisions as to what is best for them. Therefore, ALEC believes public policy should become neutral with respect to existing and emerging business models and technologies in the burgeoning broadband ecosystem. Moreover, policy responses should seek to preserve organic market forces and not attempt to replace them with regulatory fiat. Within the context of the trials, there is a need for experiments that are transparent, non-discriminatory, and openly pro-competitive. For example, the Commission may wish to exercise its authority to waive rules that may cause delays in the transition to IP, including regulations governing equipment upgrades and discontinuance of service. A particular business model or network design must not be dictated by the government.

**B. Any Necessary Regulations Should Be Simple, Certain, and Accompanied by Safeguards**

Regulations should target actual harms to consumers or to public health or safety; should not stifle innovation, competition, or access to technologies; and should be accompanied by appropriate safeguards. Safeguards against regulatory excess in the course of the trials may include: public records and other transparency measures; a requirement that executive branch officials review and approve rules before they take effect; mandating cost-benefit analysis for

economically significant rules; and attaching forbearance and/or sunset provisions to all new rules.

#### **IV. Conclusion**

In sum, ALEC believes that the Commission should authorize regulatory reform trials that conform to a scope embodied by elements from ALEC's *Principles for Communications and Technology*, namely: (1) government should strive for competitive and technological neutrality in its policies; (2) any necessary regulations should be simple, certain, and accompanied by safeguards.

For the foregoing reasons, ALEC believes the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

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